

Introduced by Senators Perata, Corbett, and MachadoJanuary 31, 2008

An act to amend Section 2924 of the Civil Code, relating to foreclosure.

LEGISLATIVE COUNSEL'S DIGEST

SB 1137, as introduced, Perata. Foreclosure.

Existing law provides for the use of a mortgage or a deed of trust as security in a transfer of real property, provides for a power of sale upon breach of the obligation that a mortgage or deed of trust secures, and establishes specified procedures that a mortgagee or trustee is required to follow when exercising a power of sale.

This bill would make technical, nonsubstantive changes to that provision.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2924 of the Civil Code is amended to
2 read:
3 2924. (a) Every transfer of an interest in property, other than
4 in trust, made only as a security for the performance of another
5 act, ~~is to~~ *shall* be deemed a mortgage, except when in the case of
6 personal property it is accompanied by actual change of possession,
7 in which case it ~~is to~~ *shall* be deemed a pledge. Where, by a
8 mortgage created after July 27, 1917, of any estate in real property,
9 other than an estate at will or for years, less than two, or in any
10 transfer in trust made after July 27, 1917, of a like estate to secure

1 the performance of an obligation, a power of sale is conferred upon
2 the mortgagee, trustee, or any other person, to be exercised after
3 a breach of the obligation for which that mortgage or transfer is a
4 security, the power shall not be exercised except where the
5 mortgage or transfer is made pursuant to an order, judgment, or
6 decree of a court of record, or to secure the payment of bonds or
7 other evidences of indebtedness authorized or permitted to be
8 issued by the Commissioner of Corporations, or is made by a public
9 utility subject to the provisions of the Public Utilities Act, until
10 all of the following apply:

11 (1) The trustee, mortgagee, or beneficiary, or any of their
12 authorized agents shall first file for record, in the office of the
13 recorder of each county wherein the mortgaged or trust property
14 or some part or parcel thereof is situated, a notice of default. That
15 notice of default shall include all of the following:

16 (A) A statement identifying the mortgage or deed of trust by
17 stating the name or names of the trustor or trustors and giving the
18 book and page, or instrument number, if applicable, where the
19 mortgage or deed of trust is recorded or a description of the
20 mortgaged or trust property.

21 (B) A statement that a breach of the obligation for which the
22 mortgage or transfer in trust is security has occurred.

23 (C) A statement setting forth the nature of each breach actually
24 known to the beneficiary and of his or her election to sell or cause
25 to be sold the property to satisfy that obligation and any other
26 obligation secured by the deed of trust or mortgage that is in
27 default.

28 (D) If the default is curable pursuant to Section 2924c, the
29 statement specified in paragraph (1) of subdivision (b) of Section
30 2924c.

31 (2) Not less than three months shall elapse from the filing of
32 the notice of default.

33 (3) After the lapse of the three months described in paragraph
34 (2), the mortgagee, trustee or other person authorized to take the
35 sale shall give notice of sale, stating the time and place thereof, in
36 the manner and for a time not less than that set forth in Section
37 2924f.

38 (b) In performing acts required by this article, the trustee shall
39 incur no liability for any good faith error resulting from reliance
40 on information provided in good faith by the beneficiary regarding

1 the nature and the amount of the default under the secured
2 obligation, deed of trust, or mortgage. In performing the acts
3 required by this article, a trustee shall not be subject to Title 1.6c
4 (commencing with Section 1788) of Part 4.

5 (c) A recital in the deed executed pursuant to the power of sale
6 of compliance with all requirements of law regarding the mailing
7 of copies of notices or the publication of a copy of the notice of
8 default or the personal delivery of the copy of the notice of default
9 or the posting of copies of the notice of sale or the publication of
10 a copy thereof shall constitute prima facie evidence of compliance
11 with these requirements and conclusive evidence thereof in favor
12 of bona fide purchasers and encumbrancers for value and without
13 notice.

14 (d) All of the following shall constitute privileged
15 communications pursuant to Section 47:

16 (1) The mailing, publication, and delivery of notices as required
17 by this section.

18 (2) Performance of the procedures set forth in this article.

19 (3) Performance of the functions and procedures set forth in
20 this article if those functions and procedures are necessary to carry
21 out the duties described in Sections 729.040, 729.050, and 729.080
22 of the Code of Civil Procedure.

23 (e) There is a rebuttable presumption that the beneficiary
24 actually knew of all unpaid loan payments on the obligation owed
25 to the beneficiary and secured by the deed of trust or mortgage
26 subject to the notice of default. However, the failure to include an
27 actually known default shall not invalidate the notice of sale and
28 the beneficiary shall not be precluded from asserting a claim to
29 this omitted default or defaults in a separate notice of default.